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The §103 Standard

To establish a *prima facie* case of obviousness, three basic criteria *must* be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992); *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988). Second, there must be a reasonable expectation of success. *In re Merck & Co., Inc.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Finally, the prior art reference (or references when combined) must teach or suggest all the claim limitations. *In re Royka*, 490 F.2d 981, 180 USPQ 580 (CCPA 1974).

Response to the §103 Rejections

For the Office's convenience, Applicant sets forth the language of independent Claim 1, followed by the Office's reasoning in rejecting Claim 1.

1 Claim 1, currently amended, recites a computer-readable medium having
2 computer-executable components for controlling a hardware device of a given
3 device type installed in a computer system, comprising:

- 4 • a first device driver for interacting with, through a device driver
5 interface, an application running on the computer system; and
- 6 • a second device driver programmed to support entry point functions
7 corresponding to a pre-selected set of operation commands generic
8 to ~~hardware devices~~ of the given device type, the entry point
9 functions callable by the first device driver for controlling operations
10 of ~~said~~ the hardware device,
- 11 • the first device driver programmed for receiving, through the device
12 driver interface, a request from the application for a requested
13 operation by the hardware device, and calling the entry point
14 functions of the second device driver to control the hardware device
15 to perform the requested operation.

16 The Office's reasoning:

17 As to claims 1, 12, and 16, Dinallo teaches the invention
18 substantially as claimed including: A computer-readable medium having
19 computer-executable components for controlling a hardware device of a
20 given device type installed in a computer system (Fig. 7-8), comprising:

21 A first device driver (the device driver, col. 6, lines 36-38) for
22 interaction with, through a device driver interface (DDInterface, col. 5,
23 line 41), an application running on the computer system (col. 5, lines
24 41-42; col. 6, lines 26-27); and

25 A second device driver (a second device driver, col. 6, lines 26-
27 and line 39) programmed to support entry point functions
corresponding to a pre-selected set of operation commands generic to
devices of the given type (col. 4, lines 25-37; col. 5, lines 3-25 and col.
6, lines 35-36 and lines 39-40) the entry point functions callable by the
first device driver for controlling operations (col. 5, lines 41-42; col. 6,
lines 40-43);

The first device driver programmed for receiving, through the
device driver interface, a request from the application (col. 5, lines 37-
42) and calling the entry point functions of the second device driver to
perform the requested operation (col. 5, line 42 and col. 6, lines 40-43).

Office Action, paragraph 6.

1 Applicant submits that the Office has failed to establish a *prima facie* case
2 of obviousness in rejecting Claim 1 by failing to establish that each and every
3 element of Claim 1 is taught or suggested by the reference. See *In re Royka*,
4 *supra*.

5 The Office argues that two particular structures teach the first and second
6 device drivers of Claim 1. The Office then argues that defining characteristics of
7 the device drivers of Claim 1 are taught by characteristics of other structures in
8 Dinallo. In effect, the Office argues that structure A of the reference teaches
9 structure A' of Claim 1 and that a characteristic of structure B of the reference
10 teaches characteristics of structure A'. In so doing, the Office cuts and pastes the
11 reference in an attempt to show the elements recited in Claim 1—a classic
12 example of impermissible hindsight reconstruction.

13 The Office argues that the first device driver recited in Claim 1 is
14 substantially taught by “the device driver, col. 6, lines 36-38”. Office Action,
15 paragraph 6. This and other portions of the Office Action and Dinallo refer to this
16 device driver of Dinallo as “audio/video device driver” shown in Figure 7 of
17 Dinallo. See Dinallo, col. 6, lines 40-44. The Office argues that the second device
18 driver recited in Claim 1 is substantially taught by “a second device driver, col. 6,
19 lines 26-27 and line 39.” Office Action, paragraph 6. This and other portions of
20 the Office Action and Dinallo refer to this second device driver of Dinallo as
21 “OS/2 stream handler device driver” shown in Figure 7 of Dinallo. See Dinallo,
22 col. 6, lines 40-44. Thus, the Office’s argument relies on the audio/video device
23 driver to teach Claim 1’s first device driver and the OS/2 stream handler device
24 driver to teach Claim 1’s second device driver.

1 The Office continues, arguing that the first device driver recited in Claim 1,
2 on which the Office relies on the “audio/visual device driver” of Dinallo, is
3 “programmed for receiving, through the device driver interface, a request from the
4 application (col. 5, lines 37-42) and calling the entry point functions of the second
5 device driver to perform the requested operation (col. 5, line 42 and col. 6, lines
6 40-43).” Office Action, paragraph 6. The portions of Dinallo on which the Office
7 relies teach that a “DDInterface” is programmed, not the audio/visual device
8 driver. Here the Office argues that features of one structure (DDInterface) teach
9 defining characteristics of another structure (the audio/visual device driver). Even
10 if DDInterface is programmed like the first device driver of Claim 1—which it is
11 not—the Office still has not established that the audio/visual device driver was so
12 programmed. For programming of the DDInterface to teach programming of the
13 audio/visual device driver they would have to be considered equivalent. But the
14 Office argues that they are not. The Office, in its rejection of Claim 1, argues that
15 the “first device driver” is taught by “the device driver, col. 6, lines 36-38” and
16 that the “device driver interface” is taught by “DDInterface, col. 5, line 41”. In so
17 doing the Office argues that the audio/visual device driver of Dinallo is not
18 equivalent to the driver interface of Dinallo. How then can the Office argue that
19 aspects of the driver interface are actually aspects of the device driver? For at
20 least this reason, the Office’s argument does not establish a *prima facie* case of
21 obviousness sufficient to reject Claim 1.

22 The Office also argues that certain defining characteristics of the second
23 device driver recited in Claim 1 are shown in Dinallo. The Office argues that the
24 second device driver of Claim 1 is “programmed to support entry point functions
25 corresponding to a pre-selected set of operation commands generic to devices of

1 the given type (col. 4, lines 25-37; col. 5, lines 3-25 and col. 6, lines 35-36 and
2 lines 39-40)” and that “the entry point functions” are “callable by the first device
3 driver for controlling operations (col. 5, lines 41-42; col. 6, lines 40-43).” Office
4 Action, paragraph 6.

5 The Office has not shown that the structure (OS/2 stream handler device
6 driver) on which the Office relies to teach Claim 1’s second device driver is
7 programmed. The cited portions of Dinallo teach instead that a different structure
8 is programmed.

9 At column 4, lines 23-38, Dinallo teaches that a device interface comprises
10 classes named DDInterface and DDTransport. These classes isolate other OO
11 components from the procedural device drivers and control the data flow to/from
12 the procedural device driver. *Id.* Yet the Office cites portions of Dinallo teaching
13 that these structures—DDInterface and DDTransport—are programmed in
14 attempting to show that Dinallo teaches the programming of Claim 1’s second
15 device driver. Even if the programming taught by Dinallo is the same as that
16 required by Claim 1—which it is not—Dinallo still does not teach that its OS/2
17 stream handler device driver is so programmed. The Office fails to show that the
18 OS/2 stream handler device driver on which the Office relies to teach Claim 1’s
19 second device driver is programmed as Claim 1 requires. For this reason also, the
20 Office’s argument does not establish a *prima facie* case of obviousness sufficient
21 to reject Claim 1.

22 The Office relies on this same reasoning in rejecting independent Claims 8,
23 12, and 16. In rejecting Claim 8, the Office states that Claim 8 is rejected for the
24 same reason as Claim 1 and also that Dinallo teaches “initializing the requested
25 operation.” Office Action, paragraph 9. This additional argument does not make

1 up for the deficiencies in the Office's rejection of Claim 1. For any one of the
2 reasons set forth regarding Claim 1 above, the Office has failed to establish a
3 *prima facie* case of obviousness in rejecting Claims 8, 12, and 16.

4 Claims 2-7, 9-11, 13-15, and 17-21 depend from independent Claims 1, 8,
5 12, and 16, respectively. They are allowable as depending from an allowable base
6 claim. These claims are also allowable for their own recited features that, in
7 combination with those recited in the independent claim on which they rely, are
8 neither disclosed nor suggested in references of record, either singly or in
9 combination with one another.

1 **Conclusion**

2 All pending claims are in condition for allowance. Applicant respectfully
3 requests reconsideration and prompt issuance of the present application. Should
4 any issue remain that prevents immediate issuance of the application, the
5 Examiner is encouraged to contact the undersigned attorney to discuss the
6 unresolved issue.

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9 Respectfully Submitted,

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11 Dated: 19 Aug 05

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